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ABSTRACT

Title IX, the only federal law intended to prohibit all aspects of sex discrimination in education, mandated that, if an institution received funds from the federal government, it could not discriminate in any of its activities. The Grove City v. Bell decision changed the focus of this law. Currently, an organization that receives federal funds in one department is free to discriminate in any other department that does not directly receive those funds. The government will not investigate claims of discrimination, and the courts will not decide if discrimination is actually occurring. Fourteen civil court cases are described in which claims were negatively affected or dismissed because of the Grove City decision. The Department of Education's Office of Civil Rights (OCR) has limited or suspended 63 claims because of the lack of direct federal funding and decreased its compliance reviews. Since the Grove City case, two key OCR administrative decisions have had negative effects on the following laws: (1) Title VI, race and national origin; (2) Title IX, sex discrimination; (3) Section 504 of the U.S. Code, handicapped students; and (4) the Age Discrimination Act. Nine of the 63 OCR claims are described, and a complete list of them is appended. (JHP)

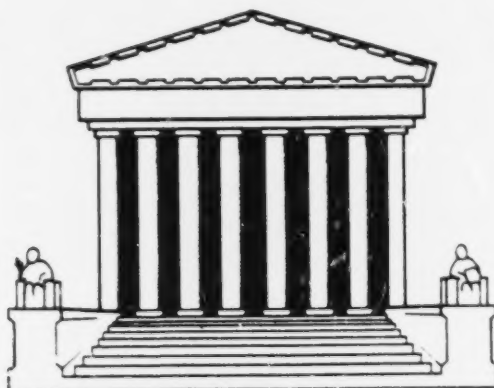
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The Impact Of

Grove City College v. Bell



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FEDERAL FUNDING OF DISCRIMINATION

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"the allegation of
discrimination, even if
true, is not part of a
program or activity that
receives or benefits from
Federal financial
assistance . . ."
CASE CLOSED.

Letter from Office for Civil
Rights to Carmel Central
School District.

MARCIA D. GREENBERGER
C. A. BEIER

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Attachment 1

Office for Civil Rights, Department of Education
List of Cases Affected by Grove City as of 10/30/84

INTRODUCTION

Title IX is the only federal law intended to prohibit all aspects of sex discrimination in education. Yet, when the U.S. Supreme Court decided the case of Grove City College v. Bell on February 28, 1984, it reduced Title IX to a law that is like a piece of swiss cheese -- it has more holes than it has coverage.

The weakening of Title IX was only the first step. The three other basic civil rights laws which have the same structure -- Title VI of the Civil Rights Act of 1964 (which prohibits race and national origin discrimination), Section 504 of the Rehabilitation Act (which prohibits discrimination on the basis of disability) and the Age Discrimination Act -- were enforced the same way. After the Grove City College case, they too were turned into a mockery of their former strength and effectiveness.

Before Grove City, the rule was simple -- if an institution or organization received money from the federal government, it could not discriminate. If the institution was found to be discriminating in violation of the statutes, the government began proceedings against it, or a court claim was filed by an affected individual. Ultimately, if the organization refused to stop the discrimination, it faced the loss of federal assistance on the principle that no organization that discriminated on the basis of race, national origin, sex, disability or age should be able to do so using federal funds.

The Grove City decision has turned civil rights protection on its head. Now, an organization that receives federal money in one department has been free to discriminate with impunity in any other department that does not directly receive those funds. For example, a university that receives federal assistance for its math program may run an athletics program in which women athletes receive inferior coaching, have lesser facilities and have fewer teams than male athletes. Or, a student might suffer sexual harassment by a professor, so long as it does not occur in the math department. Now, the government will not even investigate such claims of discrimination, and the courts will not decide if the discrimination is actually taking place.

Since the Grove City decision, in school after school numerous claims of sex discrimination in education have gone unaddressed because federal funds could not be traced directly to the department, professor, or activity accused of discrimination, even though the school itself receives large amounts of federal funds. The pattern has been repeated in Title VI, Section 504 and Age Discrimination cases as well, in all types of institutions around the country. Immediately after the Grove City decision, the Department of Education's Office of Civil Rights (OCR), by its own count closed, limited or suspended 63 claims because of the lack of direct federal funding. That was just the beginning.

Besides narrowing or closing investigations of complaints brought by individuals, OCR has decreased its own reviews of

compliance under the four civil rights laws. Before the Grove City decision, if a school received federal money, OCR initiated periodic "compliance reviews" to ensure that the school was not discriminating. Now, in order to conduct such a review, OCR must find federal funds actually going to each school program it wishes to investigate. As a result, OCR has dropped reviews in many cases, or simply never opened them.

Grove City's effect has continued beyond its initial chilling of OCR's enforcement. Court cases and administrative complaints continue to be closed or limited because federal funding cannot be traced directly to the part of the institution where the discrimination actually takes place. And, we are most recently seeing extreme interpretations of the Grove City case, narrowing coverage even further. Some examples follow, both of court cases and of administrative actions defeated by Grove City.

COURT CASES

o Bennett v. West Texas State University, 799 F.2d 155 (5th Cir. 1986). This case alleged sex discrimination in the entire intercollegiate athletic program, including scholarships, facilities, coaching, funding and opportunities. The University received federal money in the form of student financial aid, college work-study, interest subsidies and grants for improvement of physical facilities and, when the complaint was filed, received unrestricted revenue-sharing funds. However, this summer, the Court ruled that the athletics department did not receive federal funds and dismissed the entire case, including the scholarship portion.

o O'Connor v. Peru State College, 781 F.2d 632 (8th Cir. 1986). A woman hired to teach physical education and coach women's basketball charged that her firing was in violation of Title IX. The college had received federal monies to support its educational programs, but the Court found those funds, while covering the plaintiff's teaching activities, did not cover her coaching. Because she had alleged that the discrimination occurred while she was coaching rather than teaching, her claim was dismissed.

o Gallagher v. Pontiac School District, 807 F.2d 76 (6th Cir. 1986). A handicapped student's case was dismissed under Section 504 because the court held that there was no federal assistance to the specific special education program in which the student participated.

o Foss v. City of Chicago, 640 F.Supp. 1088, (N.D.Ill. 1986). The court held that a handicapped firefighter who claimed to be improperly fired on the basis of a disability could not sue the Chicago Fire Department under Section 504 because he was not employed in a program specifically receiving federal financial assistance. In fact, the Fire Department received federal funds, but the court held that the federal funds did not cover the specific duties performed by Foss, and therefore he had no protection under Section 504.

o Russel v. Salve Regina College, 649 F. Supp. 391 (D..R.I. 1986). No cause of action was found under Section 504 in this case in which a person alleged discrimination in a nursing program where the only federal funds received by the college were through financial aid to students.

o Chaplin v. Consolidated Edison Company, 628 F.Supp. 143 (S.D.N.Y. 1986). In this Section 504 case, the court held that

receipt of CETA and WIN training grants did not suffice to invoke Section 504 protection of applicants claiming they were denied employment on the grounds that they had epilepsy, unless they were part of the CETA or WIN programs. Under this decision, Section 504 protection was limited only to those persons participating in the training programs.

o Zangrillo v. Fashion Institute of Technology, 601 F. Supp. 1346 (S.D.N.Y. 1985). A woman faculty member of the Fashion Design Department claimed that her seniority rights accumulated while absent from work on maternity leave were denied her. Both the Department of Education and the federal district court rejected the plaintiffs' maternity leave claim because she had not shown the direct connection between the federal money the school received and her department.

o Walters v. President and Fellows of Harvard College, 601 F. Supp. 867 (D. Mass. 1985). A former employee of the Building and Grounds Department of Harvard University alleged that she was harassed on the job and ultimately forced to quit because of her sex. The court agreed that employment discrimination was prohibited by Title IX but dismissed her claim because it found that the maintenance of the school buildings where teaching took place was not related directly enough to the education programs at Harvard receiving federal funds.

o Moire v. Temple University School of Medicine, 613 F. Supp. 1360 (E.D. Pa. 1985). The plaintiff, a psychiatry student, claimed she was given a failing grade in a course because she had refused her professor's sexual advances. The district court dismissed her Title IX claim because the professor she accused of the sexual harassment received no federal grant money even though Temple University receives millions of dollars of federal funds.

o Keenan v. Traverse City Area Public Schools, No. G85-214-CA7, oral op. (W.D. Mich. 1985). This was a Title IX action brought in district court by a junior high school boy, who had been prevented from playing volleyball on the girls' team (the school had no boys' team). The District Court judge ruled in an oral opinion that, in spite of his conclusion that the boy was being discriminated against, because no federal funds went directly to either the volleyball program or the athletic program, the school did not have to comply with Title IX in these programs.

o Haffer v. Temple University, No. 80-1362, Order (E.D. Pa. Feb. 14, 1985). This is an ongoing case that began as a Title IX complaint against all aspects of Temple University's intercollegiate athletic program. The claim alleged that the athletic program did not provide women with equal opportunities, facilities, scholarships, coaching, training and the like. The Third Circuit Court of Appeals initially held that the entire

program was covered by Title IX, but in 1984, after the Grove City decision, the lower court limited the Title IX claim to the sole issue of the allocation of athletic scholarships. The Court dismissed the rest of the Title IX claims.

o Greater Los Angeles Council of Deafness v. Zolin, County of Los Angeles, 607 F. Supp. 175 (D. Cal., 1984). The Court held that refusal to seat deaf jurors may not be challenged under Section 504 unless federal funds were specifically dispersed to the superior court.

o Mabry v. State Board for Community College and Occupational Education, 587 F. Supp. 1235 (D. Colo. 1984). A physical education instructor at Trinidad State Junior College claimed that her firing was discriminatory, citing the fact that two male instructors were retained while she was laid off. The court ruled that she could not bring a Title IX claim because (1) the school received no federal money that was designated for the program in which the plaintiff taught; and (2) the non-designated federal money that the school received was not used to pay instructors' salaries in the program in which the plaintiff taught. The court made no mention of federal money being used by the physical education program for purposes other than salary.

ADMINISTRATIVE DECISIONS

The following two key Administrative decisions, which establish principles applying to Title VI, Title IX, Section 504 and the Age Discrimination Act, demonstrate how rigidly the Department of Education is interpreting Grove City, and how narrow coverage has become.

o In the Matter of Pickens County School District, Docket No. 94-IX-11 (Dept. of Ed. Civil Rights Reviewing, Authority Decision, Oct. 28, 1985). The Department initiated an action against the Pickens County School District because of its policy of maintaining sex-segregated physical education classes in violation of Title IX. The Reviewing Authority dismissed the enforcement proceeding, on the grounds that Pickens County received no federal funds expressly earmarked for the physical education program, even though it received federal funds which could have been used for that program.

o In the Matter of Lauderdale County School District, Docket No. 84-504/IX-8 (Dept. of Ed. Civil Rights Reviewing Authority Decision, Aug. 21, 1986). The Lauderdale County School District, Alabama, was found by OCR to be in violation of Title IX and Section 504, because of the school board's policy with respect to a teacher's handicap and marital status. The Reviewing Authority remanded the case to the administrative law judge to determine whether the receipt of federal impact aid -- monies which can be used by a school for any purpose -- were actually used by the school in the program covering the teacher. Under this approach, a school is free to channel federal monies into programs it chooses to be covered by the civil rights protections, and away from programs where it wishes to be free to discriminate.

Title VI

o Community High School District #218, #05861010, #05861084.

These two Title VI complaints alleged race discrimination in a school's disciplinary actions. In one, the actions led to a student's temporary suspension. Both were closed by OCR for lack of program-specific federal funding. In one case, an OCR memorandum regarding the closure stated that the complaint could have survived the Grove City jurisdictional inquiry if Department

money had gone into construction of the building where the action leading to the discipline took place, even though the disciplinary action that prompted the complaint was taken by school administrative personnel, the superintendent, and members of the board of education who supervised the entire school system.

In the second case, according to a recipient status calculation, the respondent received \$642,395 in federal money. But, because the money did not go to an identifiable program in which the discrimination occurred, e.g. discipline, and because the discrimination was not alleged to involve "classwide exclusions or denials of access that deny participation in all education programs, including those that are federally assisted," no OCR jurisdiction was found.

o Millard Public Schools, #07861029.

This complaint alleged that school officials failed to take appropriate disciplinary action against a student who called the son of the complainant a "nigger" and assaulted him in a school locker room. After the father sought public attention and a remedy for the incident, the family was subjected to many threatening letters and phone calls. OCR closed the investigation for lack of jurisdiction, because it found there was no program-specific federal money involved in the school's inaction.

o Haddon Heights School District, #02841065.

A Black high school student filed a complaint alleging that her school's chapter of the National Honor Society had failed to induct her because of her race. In spite of being ranked fifth in her class and participating in a wide variety of extracurricular activities, she was not among the sixteen students invited to join the Society. OCR closed the case because it found the alleged discrimination did not occur in a program or activity which was a direct recipient of federal financial assistance from the Department of Education.

o University of California at Davis, #09842120.

The complainant was an East Indian physician and a psychiatric resident in the Child Psychiatry Training Program at the University. She alleged that she had been discriminated against on the basis of national origin and sex in the assigning of work, in work evaluations, and in the treatment of her request for maternity leave. The Department of Child Psychology received financial assistance through the work-study program, but OCR claimed it had no jurisdiction over the complaint because the alleged discrimination was not related to the financial aid office. The case was closed.

o Victor Valley College Child Development Center,
#09852179.

The complainant alleged that her son was not advanced within the Child Development Center's grade levels because he was Black. Victor Valley College received over \$340,000 in Department of Education monies, but OCR decided jurisdiction did not exist because the Center itself was not a direct recipient of funds. OCR dropped the complaint.

o University of California, Department of Medicine,
Division of Endocrinology, #09862198.

A professor of medicine charged that Title VI had been violated when other staff members harassed and threatened him. After gaining access to his personnel file, he concluded that this treatment was the result of his national origin. Although the University received financial assistance from the Department of Education, OCR did not find jurisdiction because the professor's specific program was not a recipient.

o Deloux School of Cosmetology, #09862170.

The complainant alleged that she and other Black students at the school were treated differently, harassed, and derided in violation of Title VI. The school received Department of Education funds in the forms of National Direct Student Loans, Secondary Education Opportunity Grants, and Basic Education Opportunity Grants, but OCR claimed it lacked jurisdiction because the money only went toward "Campus-Based" programs.

o York College, #03852001.

The complainant was a minority male who alleged that his professors discriminated against him on the basis of race and sex when his requests to be excused from class were treated differently from requests by other students. OCR closed the case because the Biology Department in which the discrimination allegedly occurred was not a direct recipient of federal funds. In light of Grove City, OCR concluded that the case could not be pursued.

o Hilltop Beauty School, #09834004.

A student complained of sexual harrassment and race discrimination before the Grove City decision. OCR investigated the sexual harrassment Title IX allegations and found them to be without merit, but it did require the school to comply with procedures required by Title IX regulations, including revisions of its nondiscrimination policy statement. OCR closed the

complaint without investigating the race discrimination claim after -- and because of -- Grove City.

- o San Francisco State University, #09862145.

A student at the University was required to complete an internship as part of his coursework; the University placed him at the Central City Seniors Unit, where he was allegedly discriminated against in violation of Title VI. OCR dropped the case because the Senior's Unit itself was not a recipient of ED funds.

Title IX

- o Carmel Central School District, #84-1030.

This complaint alleging sex discrimination in interscholastic athletics was put on hold pending the OCR Reviewing Authority's decision in Pickens County School District. After that decision, the complaint was closed; in OCR's words, "the allegation of discrimination, even if true, is not part of a program or activity that receives or benefits from Federal financial assistance"

- o Christopher Newport College, (docket number unknown).

A female employee of the college athletic department claimed she was the victim of sex discrimination because her male colleagues with similar responsibilities received disproportionate salary increases and because female athletes were given little recognition compared to male athletes. OCR closed the case, claiming it was unable to trace funding directly to the athletic department at the College.

- o University of California at Davis, Medical School, #09852085.

The complainant was a first year medical student who alleged that she had been sexually harassed by a professor who made explicit sexual remarks to her, offered to give her better grades in exchange for sexual favors, and finally threatened to use his alliances with other professors to manipulate her grades. Although the medical school received federal funding through the Department of Education, no money was earmarked for the educational program for first year students or the Department of Surgery in which the professor taught. OCR closed the case in January 1986 because it decided the Grove City "program or activity" requirement could not be satisfied.

- o California State University, Long Beach, #09862137.

An instructor in the University's Neurology Department who was researching her master's thesis filed a complaint alleging Title IX violations due to sex discrimination and retaliation following her initial protests to the administration. Although the university was the recipient of nearly \$6 million in Department of Education funds, OCR closed the case because no money was specifically directed to the "Department of Microbiology in the School of Natural Sciences."

- o Northern Arizona University, #09862068,
Arizona State University, #09862069.

In these two cases, the complainant alleged that the university had violated Title IX when it participated in or administered a student health plan that treated pregnancy less favorably than other temporary disabilities. OCR dropped both cases on the grounds that no money from the Department of Education could be traced to the particular Student Health Centers.

- o Newport, Rhode Island School District, #01851046.

On behalf of his daughter and other female athletes attending the Rogers School, the complainant alleged that the school had violated Title IX by failing to provide a separate soccer team for female athletes. He also charged that the female athletes were subject to adverse treatment based on sex when they tried out for the boys' soccer team. The school district received \$455,000 in ED funds, but OCR dropped the complaint because the interscholastic athletics program did not directly receive financial assistance.

- o South Madison Community School Corporation, #05851092.

This complaint charged that a lack of equal athletic opportunity existed throughout the school system in violation of Title IX. The complaint alleging specific instances where opportunities were unequal in softball and basketball. OCR dropped the complaint because no federal funds went directly to the interscholastic athletic program for the school system.

- o Deer Valley Unified School District #97, #09861045
Paradise Valley Unified District #69, #09861046
Peoria Unified District #11, #09861047
Scottsdale Unified District #48, #09861048
Glendale Union High School District #205, #09861049
Temple Union High School District #213, #09861051
Prescott Unified District #1, #09861053
Amphitheatre Unified District #10, #09861055

Nogales Unified District #1, #09861056
Flowing Wells Unified District #8, #09861057
Douglas Unified District #27, #09861058
Gilbert Unified District #41, #09861059
Marana Unified District #6, #09861033
Gerard Catholic High School, Phoenix, #09861041,

These are 14 of a total of 24 Arizona recipients alleged to have discriminated against female athletes, when they scheduled the girls' interscholastic basketball team to play in the spring and the softball team to play in the winter. The complaint alleged that because of this scheduling, the participating students were put at a substantial disadvantage for college recruiting purposes. Although some of the districts were subject to OCR jurisdiction, the 14 complaints listed above were closed because federal financial assistance was not specifically used for interscholastic athletics programs.

o Hampshire College, #01862007.

The complainant alleged that the college was violating Title IX by offering student health insurance which discriminated on the basis of sex. Specifically, the allegations stated that the "offending policy does not treat pregnancy and related disabilities the same way as any other temporary disability." OCR requested and received from the college extensive records regarding the health insurance plan and the use of federal financial assistance. Based on its analysis of these records, OCR determined that Hampshire College did operate a student health plan but dropped the case because "such a plan is not part of a program or activity that receives or benefits from Federal financial assistance from the Department."

o Adelphi University (docket number unknown).

The complainant alleged that the university discriminated against students on the basis of sex when it offered a student health insurance plan which treated pregnancy and related disabilities less favorably than other temporary disabilities. OCR established that the university itself was the policy holder, that the Risk Management Coordinator selected and procured the insurance policy, and that students were automatically billed by the Office of Student Accounts, to which students paid their premiums. The University Health Services, within the School of Nursing, distributed claim forms, submitted claims, and provided health care and referrals. Still, OCR dropped the case because the plan was not operated by "an organizational unit" which benefited directly from federal assistance.

- o Jefferson State Junior College, #04852058.

The complainant student alleged that the college was violating Title IX by treating students differently on the basis of sex. Specifically, it was alleged that the student health insurance offered at the college treated pregnancy related conditions differently from other temporary disabilities. OCR established that the college did administer the plan by holding the master policy, providing students with a plan brochure during registration, and including an application with the brochure. OCR also found that the student financial aid program received over \$1,400,000 from ED. Because the plan was administered by the Office of Student Activities in the Department of Student Development, for which ED funds were not earmarked, OCR dropped the case.

- o Skidmore College (docket number unknown).

The complainant alleged that the college was in violation of Title IX in offering student insurance which discriminated on the basis of sex. In its preliminary investigation, OCR determined that the college did offer an accident and sickness insurance plan and that it had selected the carrier. Furthermore, the Office of Financial Services was responsible for collecting and forwarding student premiums to the carrier, handled student complaints, and forwarded an application and brochure to each student. OCR dropped the complaint, however, because the plan was not operated by an office of the college which received federal dollars.

- o Downers Grove S.D. #58, 05855006.

OCR began a compliance review of this school district to examine assignments to physical education classes. Although the district received federal financial assistance, OCR found that no federal monies were targeted for physical education programs in the district. Citing the Grove City and Pickens County decisions, OCR closed the case for lack of jurisdiction.

- o Los Angeles Southwest College, #09846001.
- o Victor Valley Community College, #09846004.

OCR began compliance reviews at both of these schools to investigate the area of intercollegiate athletics, focusing on possible Title IX violations. Both were closed in August 1984 because of a policy memo interpreting the Grove City decision.

- o Birmingham Southern College, #04852055.

The complainant alleged sex discrimination in the health insurance plan offered by the college, which administered the plan through its personnel office. Because the office itself was

not a recipient of ED earmarked funds, the case was closed. Over \$530,000 in ED funds were received by the college in FY 85.

- o Augustana College, #05852071.

OCR received a sex discrimination complaint against the college which alleged that the college offered, endorsed or provided a student health insurance plan which treated pregnancy and related conditions less favorably than other covered temporary disabilities. OCR notified the college that, in light of Grove City, it must trace ED funds to the specific program in which the plan was administered. OCR determined that Augustana selected the carrier and was responsible for collecting and transmitting students' premiums to the underwriter. OCR closed the case, however, stating that this administrative activity did not occur in a program which benefited from ED funding.

- o St. Louis University, #07852049.

The complainant alleged that the university had violated Title IX by offering students a health insurance plan which discriminated on the basis of sex. OCR conducted a preliminary investigation and then closed the case, citing its lack of jurisdiction over "the program area" of the complaint.

- o Eastern Montana College, #08852021.

OCR received a complaint alleging that Eastern Montana College had violated Title IX by offering students a health insurance plan that did not treat pregnancy and related conditions as favorably as other temporary disabilities. OCR closed the case three months later because the specific program which was the subject of the complaint did not receive ED monies.

- o Grand Canyon College, #09862066.

The complainant alleged that this school was discriminating on the basis of sex in offering a health insurance plan which treated pregnancy and related conditions less favorably than other temporary disabilities. OCR established that the college's Business Office was directly involved in administering the plan to students but dropped the case since no ED funds were earmarked for that office.

Section 504

- o University of Charleston, #03842040.

This case, filed by a man with epilepsy, alleged discrimination in job assignment, job treatment, salary, and discharge. The closure letter sent to the complainant, who had

filed his first papers nearly four years before, states specifically that the OCR would have proceeded with an investigation before Grove City but lacked jurisdiction following the decision.

- o Mayfield City School District, #15-86-1019.

The complainant bus driver in this case alleged that the district's refusal to promote him and his eventual discharge were based on discrimination because of his handicap. His companion age discrimination allegation was transferred to the EEOC. Although the District received more than a quarter of a million dollars from the federal government for the 1985-86 school year alone, the OCR found no jurisdiction because the district got no federal financial assistance "for the purpose of providing transportation or for the purpose of paying the salaries of individuals who drive or operate District buses."

- o Affton 100 School District, #07861036.

In this complaint, the mother of an emotionally disturbed teen-ager alleged that her son's history teacher called him "retard" and "stupid" and refused to let him tape lectures for exercises in note taking, despite previous approval of such exercises because of his graphic-motor skill difficulties. It took OCR just over two weeks to close the case for lack of jurisdiction because of Grove City.

- o Johns Hopkins University, School of Medicine, #03862008.

The complainant was a handicapped applicant to the Human Genetics Program in the University's medical school. Confined to a wheelchair, she inquired from program administrators what arrangements had been made to make the program accessible. She was told that the facilities which housed the program were not accessible. OCR concluded that it had no jurisdiction because federal monies from the Department of Education could not be traced to the Human Genetics Program specifically.

[NOTE: the complaint was transferred in March 1986 to HHS since the program received a \$133,000 grant from NIH.]

- o West Hills Community College, #09862173.

A mother filed a complaint on behalf of her son, who was confined to a wheelchair, alleging that the college was in violation of Section 504 because its men's dormitory was inaccessible to those with severe handicaps. Although the college received financial support from the Department of Education, the complaint was dropped because no monies went directly to finance housing on campus.

- o Teachers College, Columbia University, #02842002.

The complainant was a handicapped manuscripts curator in the college library who claimed that he lost his job as a result of discrimination in violation of Section 504. The OCR investigator concluded that OCR had no jurisdiction in light of the Grove City decision.

- o Columbia College, #07842025.

A dyslexic student at Columbia College charged the school with discrimination on the basis of handicap, when a sociology professor there refused to modify examinations to enable the student to take them. The case was dropped in light of the Grove City decision: no jurisdiction could be established because the Sociology Department itself did not receive federal financial support.

- o Rutland School District, #01861009.

A handicapped teacher charged the Rutland School District with discrimination in violation of Section 504 when it allegedly failed to list her as an available substitute instructor. In addition, she charged the District with retaliating against her following an earlier complaint. Although the school district was a recipient of federal funds, OCR dropped the case because the Arts and Humanities program within the system was not a direct recipient.

- o Logan College of Chiropractic, #07852009.

A student suffering from a chemical imbalance, who had completed seven semesters of credited work, complained when he was not permitted to complete his course work and to graduate. He alleged that this treatment was the result of discrimination against him because of his disability. Although the college received work-study monies from the Department of Education, OCR dropped the case because funds could not be traced directly to the "educational programs and activities" operated by the school.

Age Discrimination Act

- o Lockport High School District #205, #05861036.

The complainant in this case alleged that she was discriminated against on the basis of age when the district school board refused to let her speak at one of its meetings. Before this case was closed for lack of program-specific federal financial assistance, an internal memo regarding the case noted that no federal dollars went into the construction of the administration building in which the school board met.

- o Suffolk County Community College, #02862017.

The complainant alleged that the student insurance offered by the college discriminated on the basis of age, by failing to insure students over the age of 28, and on the basis of sex, because it did not treat pregnancy and related disabilities the same as any other temporary disabilities. After concluding that the college was offering the plan, OCR closed the case because the college office which generated the mailing labels for the insurance company and the Dean, who wrote the letter to the students to introduce the plan, were not part of "an organizational unit of the College that receives or benefits" from ED funds.

In addition to the more recent cases described above, a complete list of the original 64 cases closed or put on hold prepared by the Office of Civil Rights itself is included in Attachment 1. An elaboration of just a few of these cases follows:

- o Northeastern University 01-84-2020. A Northeastern University student filed a complaint alleging sexual harassment. While Northeastern University receives large amounts of federal funds, OCR decided it could not investigate the complaint because Lake Hall, the building where the alleged discrimination occurred, was not built or renovated with federal funds. If the alleged sexual harassment had occurred in student dorms which were renovated with federal loans, the complaint would have been investigated.

- o Centralia College 10-75-4064. Although a Title IX complaint was filed alleging that the college did not provide women athletes with the same funding, number of games and use of facilities that men received, after Grove City, OCR limited its investigation only to athletic scholarships and ignored all of the other problems which had been alleged.

- o Gonzaga University 10-80-2016. A female student at Gonzaga University filed a Title IX complaint alleging that the college did not provide women athletes with the same funding, number of games and use of facilities that male student athletes received. Using Grove City as the reason, OCR limited the complaint to unequal allocation of athletic scholarships, settled with the University on that claim, and ignored the other allegations of discrimination.

o County of Plumas, Local Agency Formation Commission and Plumas County Planning Department 09-84-4013. A woman filed a complaint against the County of Plumas Local Agency Formation Commission and Plumas County Planning Department alleging that she was unlawfully fired on the basis of sex and handicap. OCR refused to resolve the complaint on the grounds that it had no jurisdiction since there was no record of any federal money going to the specific office where she was employed.

o University of Alabama 04-79-2098. A women's athletic coach alleged Title IX violations in the areas of coaches' pay, scholarships, recruiting and housing, and dining facilities. OCR limited the complaint to scholarships, found that the University was in compliance in that area, and refused to investigate the other allegations of discrimination.

o Duke University 04-81-2020. A complaint was filed against Duke University which cited a student health insurance program that excluded pregnancy coverage, in violation of Title IX. OCR investigated and found discrimination, but then refused to go forward with the case on the basis of the Grove City decision.

o University of Washington 10-78-0017. A women filed a Title IX complaint against the University of Washington, alleging that the school's athletic program discriminated against her and other women athletes in the provision of resources and opportunities. OCR closed her complaint with respect to all claims except for athletic scholarships, on the basis of the Grove City decision.

o Simmons College 01-84-2005. A woman alleged age and sex discrimination by Simmons College, Boston, Massachusetts when her position with the College's Center for the Study of Children's Literature was terminated. OCR, in closing the case, stated that it did not have the jurisdiction to investigate the complaint.

o University of Maryland 03-77-0308; 03-81-2028. Complaints were filed against the University of Maryland alleging discrimination against women athletes, citing differences in travel and per diem allowances, provision of support services, lack of teams and other deficiencies. After extensive investigation, in February of 1984, OCR found that the University was in violation of Title IX, but refused to go forward on the complaint immediately after the Grove City decision. To this day, the complaint remains unresolved.

* * *

SUMMARY

The foregoing cases demonstrate that enforcement of civil rights statutes has been severely affected by the Grove City decision. OCR has limited investigations of complaints and curtailed compliance reviews, and courts have dismissed or narrowed private suits. This constricting of enforcement means that even if the discrimination is indisputable, in many cases nothing can be done. Discriminatory institutions continue to receive millions of dollars of federal funds with impunity.

Attachment 1

1. Simmons College, Maine (C)
No. 01-84-2005
Title IX/ Employment - Center for
the Study of Childrens Literature
2. Northeastern Univ. (C)
No. 01-84-2020
Title IX/Sexual Harassment
3. Southeastern Mass. Univ. (C)
No. 01-84-2025
Title IX/Employment
4. Mass. College of Art (C)
No. 01-84-2028
Title IX/Student Services
5. So. Ct. State College (CR)
No. 01-84-6001
Title IX/Athletics - Financial Aid
6. Yale Univ. (C)
No. 01-83-2025
Section 504/Employment
7. So. Central Comm. CT (C)
No. 01-84-2010
Section 504/Employment
8. Univ. Mass. Amherst (C)
School of Nursing
No. 01-83-2024
Title VI/Grading

9. Yale Univ. Center for British Art (C)
No. 01-84-2027
Section 504/Employment
10. N.E. Sch. of Law (C)
No. 01-84-2029
Title VI/Grading
11. Univ. Mass., Boston (C)
No. 01-84-2031
§ 504/Auxiliary Aids
All Education Funded Programs
12. Yale Univ. (C)
No. 01-84-2033
Section 504/Employment
13. Univ. of Vermont (C)
No. 01-84-2009
Age Discrimination
14. Sag Harbor, NJ Sch. Dist. (C)
No. 01-83-1149
Title IX/Employee Compensation:
Coaches Salaries
15. East Greenbush Sch. Dist., NY (C)
No. 02-84-1016
Title IX/Athletics
Program funding and coaches
salaries

16. Carmel Sch. Dist., NY (C)
No. 02-84-1030
Title IX/Athletics
Coaches Salaries, sports schedule
and accommodation of interest
and abilities.
17. Addison Central S.D., NY (C)
No. 02-84-1042
Title IX/Athletics
Accommodation of interests and
abilities.
18. Fashion Institu. of NY (C)
No. 02-77-0560
Title IX/Employee Evaluation
Treatment and Compensation
19. Ramapo Central SD, NY (C)
No. 02-83-1038
Section 504/Program Services
as they relate to handicapped
parents.
20. Univ. of Maryland (C)
No. 03-77-0308
Title IX/Athletics Program
Finding: violation
21. Univ. of Maryland (C)
No. 03-81-2028
Title IX/Athletics Program
Finding: violation
22. Penn. State, PA (C)
No. 03-81-2036
Title IX/Athletics Program
Denial of Access

23. Univ. of Alabama (C)
No. 04-79-2098
Title IX/Athletics Program
Finding: violation
24. Mississippi College (C)
No. 04-76-0050
Title IX/Title VI -
Employee Eval., Treatment
and Hiring
25. Auburn Univ. (C)
No. 04-81-2005
Title IX/Athletics including
Athletic scholarships
Finding: violation
26. Duke Univ. NC (C)
No. 04-81-2020
Title IX/Athletics including
Athletic Scholarships, student health
insurance, housing, retention, and
employment.
27. Dekalb Comm. College (C)
No. 04-77-0042
Section 504/Employment
28. Univ. of Miami
No. 04-80-2059
Title IX/Athletics Program
Findings: Corrective action plan
to remedy violation accepted.
29. Vanderbilt Univ. TN (CR)
No. 04-84-6001
Title IX/Athletics including
Athletic scholarships
30. Medical Univ. of S. Carolina (C)
No. 04-84-2051
Section 504/Employment
31. Nova University
No. 04-84-2052
Title VI/National Origin
Grading

32. Miami Univ., OH (C)
No. 05-84-2008
Title IX/Athletics including
Athletic scholarships
Finding: Distribution of financial
aid was equivalent.
33. Ball State Univ. (C)
No. 05-82-2045
Title IX/Athletics
Finding: Athletic financial aid
awarded disproportionately in
academic year 1981-82. Remedied
in academic year 1982-83
34. Ohio Univ. (C)
No. 05-79-2127
Title IX/Athletics including
Athletic scholarships
Finding: Financial aid awarded
proportionately. OCR raised concerns
and compliance plan adopted.
35. Western Michigan Univ. (C)
Title IX/Athletics including
Athletic scholarships
Findings: Compliance, however,
concerns raised regarding
deletion of sports.
36. Univ. of Minnesota (C)
No. 05-74-0526
No. 05-75-0534
Title IX/Athletics including
Athletic scholarships
Findings: Female athletes not
awarded aid proportionately.
University provided assurance that
it would increase assistance over the
next two years.
37. Baylor Univ. (CR)
No. 06-83-6001
Title IX/Athletics including
Athletic scholarships

38. State Fair Comm. College, MO (C)
No. 07-84-2012
Title IX/Athletics including
Athletic scholarships
39. State Fair CC, MO (C)
No. 07-84-2014
Title IX/Retaliation and
Athletic scholarships
40. Southeast CC Area (C)
No. 07-84-2020
Title IX/Athletics including
Athletic scholarships
41. Univ. of Nebraska (CR)
No. 07-84-6004
Title IX/Athletics including
Athletic scholarships
42. Univ. of Kansas (CR)
No. 07-84-6402
Title IX/Athletics including
Athletic scholarships
43. College of St. Mary (C)
No. 07-84-2023
Age Discrimination
44. Kansas State Univ. (C)
No. 07-84-2024
Section 504/Employment
45. Columbia College (C)
No. 07-84-2025
Section 504/Employment
46. Wichita Business College (C)
No. 07-84-2026
Section 504/Employment
47. Central Midwest Ed. Lab., Mo (C)
No. 07-82-1017
Section 504/Employment

- 48. Univ. of Wyoming (CR)
No. 08-84-6001
Title IX/Athletics including
Athletic scholarships

- 49. Univ. of Colorado (CR)
No. 08-84-6003
Title IX/Athletics

- 50. South Dakota State Univ. (C)
No. 08-84-2006
Title IX/Athletics including
Athletic scholarships

Case

- 51. Los Angeles Southwest College (CR)
No. 09-84-6001
Title IX/Athletics

- 52. Victor Valley CC (CR)
No. 09-84-6004
Title IX/Athletics

- 53. Hilltop Beauty School, Inc. (C)
No. 09-83-4004
Title IX/Sexual Harassment
Title VI/Differential Treatment

- 54. Arizona State Department of
Correction (C)
No. 09-83-4003
Section 504/Employment

- 55. Heald Institute of Technology
No. 09-83-2065
Title VI
- 56. Univ. of Washington (C)
No. 10-78-0017
Title IX/Athletics including
Athletic scholarships
- 57. Univ. of Washington (C)
No. 10-83-2018
Title IX/Athletics including
Athletic scholarships
- 58. Idaho State Univ. ID (C)
No. 10-78-0042
Title IX/Athletics including
Athletic scholarships
- 59. College of Southern Idaho, ID (C)
No. 10-81-2032
Title IX/Athletics including
Athletic scholarships
- 60. College of Southern Idaho ID (C)
No. 10-80-2046
Title IX/Athletics including
Athletic scholarships
- 61. Gonzaga Univ. WA (C)
No. 10-80-2016
Title IX/Athletics including
Athletic scholarships
- 62. Centralia College WA (C)
No. 10-75-4062
Title IX/Athletics including
Athletic scholarships
- 63. Centralia College, WA (C)
No. 10-74-4080
Title IX/Athletics including
Athletic scholarships